

EXHIBIT 466

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

IN RE: NATIONAL	:	
PRESCRIPTION	:	MDL No. 2804
OPIATE LITIGATION	:	
	:	Case No.
	:	1:17-MD-2804
THIS DOCUMENT RELATES	:	
TO ALL CASES	:	Hon. Dan A. Polster

- - -

Monday, January 7, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

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Videotaped deposition of TOM NAMETH, held at
the offices of Cavitch, Familo & Durkin,
1300 East Ninth Street, Cleveland, Ohio, commencing at
9:03 a.m., on the above date, before Carol A. Kirk,
Registered Merit Reporter and Notary Public.

- - -

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1 anomaly associated with a controlled substance,
2 in terms of size, would that be something that
3 would constitute a suspicious order?

4 A. Not necessarily. It would be
5 something that would jump out of the page at you
6 and then you'd have to look into that specific
7 reason why that -- there was an increase from
8 month to month or that particular month.

9 So it, not necessarily, would make
10 it a suspicious order. It would jump out of the
11 page. Then there would be follow up to
12 determine whether it was suspicious or not.

13 Q. Okay. So if you were looking at
14 this one month -- the monthly -- what do you
15 want to call this report for the sake of the
16 transcript? Do you have a preference as to what
17 you call it?

18 A. Twelve-month order. I mean,
19 12-month --

20 Q. The 12-month report?

21 A. Yeah, I guess.

22 Q. Okay. And when we say that, we'll
23 agree that we're referring to the one that's
24 printed monthly and reflects a rolling 12-month

1 average.

2 Is that fair?

3 A. Right. Yes.

4 Q. Okay. So if you were looking --
5 and I assume part of your responsibilities were
6 to review this 12-month report, correct?

7 A. Yes.

8 Q. Was anybody else responsible for
9 reviewing this 12-month report on a monthly
10 basis?

11 A. If I was on vacation, the VP of
12 pharmacy would do that --

13 Q. Okay.

14 A. -- but it would only be between
15 the two of us.

16 Q. Okay. And you said that you would
17 use that report to see if anything jumped out at
18 you, right?

19 A. I would use the report to make the
20 next determination of whether we had to do
21 something else besides necessarily what had to
22 be -- there was another form that we used that
23 we sent out to a store to ask them the reasons
24 why of the increase.

1 Q. Okay. So let's say Store Number 1
2 has a 12-month rolling average of five bottles
3 of hydrocodone per month, fair?

4 A. Yes.

5 Q. Okay. And then you get a report
6 on January 1st showing that in December they
7 ordered 15 bottles of hydrocodone.

8 A. Yes. Okay.

9 Q. And so would that appear on the
10 report?

11 A. Yes.

12 Q. Okay. And would that jump out at
13 you?

14 A. Yes.

15 Q. Was there any policy and procedure
16 at DDM that told you what should jump out at
17 you?

18 A. It was discussed that if we
19 determined that it was a policy -- not a policy.
20 We determined that the volume was higher than
21 normal, then we would follow up with a report to
22 the store.

23 Q. Okay. And so it sounds like there
24 wasn't --

1 A. In other words, if they're going
2 up from two bottles to four bottles, that, not
3 necessarily, would -- it's a higher volume than
4 normal. And that's why we had to look at that
5 as an individual, because we had to determine
6 what store we're looking at.

7 If you're looking at just a
8 number, a black and white number, it really
9 doesn't tell you much. It tells you a volume,
10 but it doesn't tell you anything besides that.
11 So that's why we had to look at it and then
12 determine a reason why, and that reason then
13 would go out to the stores. We'd ask the
14 question and then they would have to respond.

15 Q. Okay. And I appreciate all that.
16 What I'm really focused on right now is, did you
17 ever receive any training or was there any
18 policies and procedures that said, "All right,
19 Tom, if you see this report and this store that
20 was ordering five has ordered, you know -- if it
21 increases by X percentage, then you have to do
22 something."

23 Was there anything like that?

24 A. Well, as being a retail pharmacist

1 for 15 years probably before, you know, I was
2 very well aware of what stores -- the
3 functionalities of stores do, how their orders
4 were done, and they gave you a background.

5 Now, we also -- when I came on
6 board, it was verbally dictated to me that this
7 is what we should do if you have -- if you feel
8 that this is higher than normal, then we should
9 follow up. So that's what we did.

10 Q. Okay. So what I'm hearing is --
11 tell me if I'm wrong -- there was no set policy
12 and procedure that required you to follow up
13 based on a particularly -- like a percentage
14 increase? There was no percentage that says,
15 all right, in this instance, you have to follow
16 up with the pharmacist, correct? It was a
17 judgment call that you got to make?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. And so on any given month, let's
22 take that store we just talked about that had an
23 average of five bottles, correct? Okay?

24 A. Yes.

1 Q. Is there a specific number where
2 for Tom, an increase that would jump out at you
3 where you'd say, "I need to follow up"?

4 A. Well, the report itself, I think,
5 would populate once that -- that number would,
6 say, hit a threshold. I think the threshold of
7 that report, if I don't -- if I remember
8 correctly, was about 90 -- 90 percent,
9 99 percent or so. So when it would populate in
10 the report, in your case, that would have to be,
11 what, ten bottles?

12 Q. Mm-hmm.

13 A. And so in my opinion, that would
14 be a substantial increase. So we would have to
15 understand why it went from five to ten. So
16 that would -- that would then generate a report
17 on my side out to the stores to ask them that
18 question.

19 Now, there's some other things
20 involved. If a store was -- you know, had a
21 clinic that opened up next store, Cleveland
22 Clinic was populating, you know, individual
23 satellites around the suburbs of Cleveland quite
24 rapidly, and so there are things that we knew --

1 that's why it's important for us to have
2 somebody look at it rather than just take it by
3 its value on a piece of paper.

4 Q. Okay. So my question was
5 specific. Was there a certain number that would
6 cause you to do follow up? And I appreciate all
7 the other things you told me. We'll be here
8 until Friday if --

9 A. Okay.

10 Q. I appreciate the information.

11 A. I'm just trying to explain what we
12 do, but you know.

13 Q. Yeah. And I don't want anybody --

14 A. I understand.

15 Q. -- to be mad at me later --

16 A. No. I understand.

17 Q. -- when it's 7:00 and we're still
18 here. But -- you know, so I -- if you can
19 listen to my question. I'm going to try and ask
20 very specific pointed questions for what I need,
21 and if you can try and answer the question.
22 Certainly you're welcome to provide any
23 additional information you want, but I don't
24 want to keep you here all day.

1 So let me ask this. Okay. So
2 this report's printed monthly, right?

3 A. Correct.

4 Q. Okay. Does it have all DDM's
5 stores on it?

6 A. Yes, it does.

7 Q. And it's broken up by store?

8 A. Yes.

9 Q. Okay. Does it include just
10 controlled substances or other items?

11 A. Yes.

12 Q. Just controlled substances. Okay.

13 Do all controlled substance orders
14 appear on this report or just the ones that
15 exceed the 99 percent?

16 A. They can all appear on there.

17 Now, they -- I think that once they're printed,
18 only the 99 percent were. I don't -- I think
19 it's only the 99 percent.

20 Q. Okay. So let's say -- let's use
21 our example again, and I don't remember what
22 store it was. We'll say Store 1 so we can
23 remember. So Store 1 has an average of five
24 bottles a month, right?

1 A. Yes.

2 Q. This feels like math class,
3 doesn't it?

4 A. Yeah.

5 Q. Okay. So they're averaging five a
6 month and then all of a sudden in December they
7 order nine, right?

8 A. Yes.

9 Q. Okay. That wouldn't show up on
10 the report, would it?

11 A. Probably not.

12 Q. Okay. So then we're at nine, and
13 then let's say the next month they order 16.
14 That wouldn't show up on the report either,
15 would it?

16 A. Well, I'd have to look and see.
17 It's a rolling average, so ...

18 Q. Okay. So the December amount --

19 MR. JOHNSON: Let him finish.

20 Q. Yeah. Go ahead.

21 A. I don't know. I'd have to look
22 at -- and we'll do the math, I guess, and see if
23 a rolling average from month to month when
24 you're going back 12 months, I would have to

1 understand the math.

2 Q. I gotcha. But you'd agree that
3 each month they could increase 98 percent over
4 what their last 12-month average was and it
5 wouldn't show up on the report; is that correct?

6 A. Well, it's an increment -- when
7 you're looking at it on a month to month on a
8 rolling 12, I don't -- when you average in the
9 whole year, I don't think it -- I'm not quite
10 sure. I'd have to look at the math, you know,
11 and if it pops on that report.

12 Q. Okay. So my question was, I'm
13 trying to frame my question in a way that --

14 A. Well, I -- yeah. You're trying --

15 Q. Let me ask --

16 MR. JOHNSON: Let him ask you --
17 let him --

18 Q. So my question is: If you
19 could -- that a store could increase its orders
20 every month, right?

21 A. Mm-hmm.

22 Q. Under that formula just generally
23 over time and without having any of those
24 ordering patterns show up on that report,

1 correct?

2 A. If you're only looking at a month
3 to month, you're correct in your statement that
4 you wouldn't see that. But when you throw in
5 the rolling average of 12, I don't know if that
6 skews that number.

7 Q. Well, let's say in month 12 you
8 increase your orders by 98 percent, all of a
9 sudden your 12-month average went up, didn't it?

10 A. Yes.

11 Q. And so then you could then
12 increase again by 98 percent, which would then
13 again bring your --

14 A. I don't think on a monthly -- each
15 month that would -- you could do a 90 -- or
16 100 percent, whatever it is, 99 percent every
17 single month and increase that because it's a
18 rolling 12. It looks back -- you know, it's
19 slow -- it's a slow progression.

20 Q. Right. So the January before
21 rolls off when the --

22 A. Okay. Yes. Yes.

23 Q. -- most recent January goes on.

24 A. Mm-hmm.

1 (Reporter clarification.)

2 A. I'm sorry.

3 Q. The -- yeah. We talked over
4 there, each other.

5 So your January from last year
6 rolls off the report when your January from this
7 year gets added?

8 A. Yes.

9 Q. Okay. And so if your January from
10 last year was five bottles and your January this
11 year was ten, your average goes up, right?

12 A. Yes.

13 Q. Which then raises the amount that
14 you could order in February without that amount
15 showing up on your report, correct?

16 A. I'm taking your word for it.

17 Q. Okay. I mean --

18 A. Without doing the math, but yes.

19 Q. Right. Well, and I haven't given
20 you any specific math. And it's your report.

21 So I'm just trying to understand how this would
22 work and how things would show up.

23 A. Yeah.

24 Q. Okay. How often would stores show

1 up on this report?

2 A. They would show up on the report
3 with some frequency. It depends on if it's
4 cough and cold and flu season, then you're going
5 to see more cough syrups report -- on the
6 report. But how often a particular store?

7 Q. I guess what I want to know is,
8 Tom goes into work on January 1 -- I'm sorry for
9 calling you Tom. Mr. Nameth.

10 A. That's fine.

11 Q. Mr. Nameth goes into work on
12 January 1. The report prints out. It lands on
13 your desk. Are all 74 stores on that report --

14 A. Yeah.

15 Q. -- showing stuff that's exceeded
16 the 99 percent rolling average?

17 A. All stores are on the report but
18 there could be blank pages that they don't show
19 anything.

20 Q. Okay. So if no stores' order
21 history trigger this reporting system that had
22 been set up, they would just have the store but
23 nothing underneath?

24 A. Right.

1 Q. And how common was it for the
2 store to be listed with nothing underneath it?

3 A. I would say it was not that common
4 for having a store having nothing. So we had to
5 review each -- you know, it was fairly time
6 consuming to do, but ...

7 Q. Let's talk about opioids.

8 A. Yeah.

9 Q. When would this report print?
10 Would it be the first of the month?

11 A. Yes.

12 Q. Okay. And would that be the thing
13 you'd expect to spend that day doing, looking at
14 that report?

15 A. Generally, yeah. I mean, it was
16 something that took some time.

17 Q. Okay. How many days would you
18 spend on it?

19 A. It depends on how much time I had.
20 It could be several hours to, you know, a day
21 maybe, looking at it.

22 Q. Okay. Would it ever take you more
23 than a day to go through that report and do
24 whatever due diligence you needed to do?

1 A. Not that I recall.

2 Q. Okay. And how many stores would
3 you say on average would show up on that report
4 regarding opioid purchases?

5 A. Strictly opioids?

6 Q. Correct.

7 A. There might be a dozen stores.

8 Q. Okay. So 12 of the 74 stores
9 would appear on average, just generally on a
10 given month showing that their orders for the
11 last month for opioids were greater than
12 99 percent of their 12-month rolling average; is
13 that fair?

14 A. Yeah. Now, that number -- when we
15 got towards 2012, '13, '14, those numbers seems
16 to -- seemed to decrease.

17 Q. Do you know why that was?

18 A. I do not know.

19 Q. Did you ever look into why the
20 amount of times a store appeared on that report
21 went down around that time frame?

22 A. No.

23 Q. Okay. So you noticed a marked
24 decline in stores showing up on your suspicious

1 order monitoring report and you didn't do
2 anything to figure out why?

3 A. If they decreased?

4 Q. Correct.

5 A. No, I did not.

6 Q. Okay. Do you have any idea today
7 why fewer stores were showing up on your
8 suspicious order monitoring report starting in
9 2012?

10 A. No.

11 Q. Are you aware that that time frame
12 more or less coincides with when this opioid
13 crisis really kind of got blown out of
14 proportion? Excuse me. Blew up is the word I
15 was looking for.

16 A. I think that it was more in the
17 news and there were some policies that the State
18 Board of Pharmacy made -- and, you know, I'm --
19 again, I'm not quite sure of the year, but there
20 was some changes to the board of how many
21 opioids you could dispense at a particular time,
22 so ...

23 Q. Do you know what those rules are?

24 A. Quantities, you know -- actually,

1 the big thing was when hydrocodone went to
2 Schedule II, but now you're talking, what, I
3 think in '14. So prior to that, not really. I
4 don't know why that would have been.

5 Q. So you told me that you thought
6 about a dozen stores would show up regarding
7 opioids on a monthly basis on that report. Was
8 that prior to 2012 or was that --

9 A. Yeah. I think that -- that was
10 probably around '12, '13. Prior to that, it
11 might have been slightly more on -- strictly on
12 the opioids.

13 Q. Okay. And you would spend upwards
14 of a day looking into that and doing due
15 diligence to determine whether that ordering
16 pattern was suspicious?

17 A. I don't know if I would say
18 upwards of a day.

19 Q. Okay. So --

20 A. A portion of the day.

21 Q. Okay. And what would that -- what
22 would the time that you spent -- what would you
23 spend that time doing?

24 A. Reviewing each particular order

1 that would show on the report, looking at what
2 store it was, determining to the best of my
3 knowledge why that would be, and then sending
4 out reports to the store. You know, generating
5 another report to the store to ask them, you
6 know, why they had an increase.

7 Q. Okay. Did you always send the
8 form to the store?

9 A. I'm sending the forms and it would
10 always go to the store, yes.

11 Q. Okay. So any time that a store
12 showed up on that report, you would send a form
13 asking them to explain why their ordering had
14 increased?

15 A. No.

16 Q. Okay.

17 A. I mean, that's when I used a
18 judgment.

19 Q. So this report would populate
20 automatically, correct?

21 A. Yes.

22 Q. And you would get the report,
23 correct?

24 A. Right.

1 Q. And you were primarily responsible
2 for reviewing it, correct?

3 A. Yes.

4 Q. And you'd spend a couple hours on
5 the day that it populated reviewing it, right?

6 A. Right.

7 Q. And depending upon what popped out
8 at you, you would then decide whether to send a
9 form to the store asking for more information
10 about why --

11 A. Well, you know, if the volume --

12 Q. Hold on. You would then send a
13 form that would ask them to explain why their
14 orders increased, correct?

15 A. Yes, but I would send a form -- if
16 the quantities went from one to two or three, I
17 generally would not send a report. If the
18 quantities went from five to ten, that would
19 generate a report, so ...

20 Q. Why would five to ten generate a
21 report to the store and not one to three?

22 A. Well, when you're looking at ups
23 and downs in the marketplace and all the
24 variables, you know, when you're talking about

1 increase by one bottle, so to speak, that
2 necessarily would not, in my mind, generate a
3 report that would lead to a possible suspicious
4 order.

5 Q. Okay. That was a judgment call
6 you made, right?

7 A. Yes.

8 Q. And what was the purpose of the
9 report that you would send to the stores?

10 A. Well, it was twofold, in my
11 opinion anyway. One was to see why the
12 increase. The second was to see, after they do
13 the math of -- say, like they had an increase in
14 the number of volume of scripts, I also wanted
15 to know whether or not the remaining bottles
16 were on the shelf, or if there was some
17 diversion where someone was -- you know, are we
18 missing bottles? Because if they had ordered
19 ten bottles and five were used for filling
20 scripts, they better have five on the shelf, so
21 to speak.

22 Q. Did you ever send out one of those
23 forms and get a response back that, you know,
24 we're missing two bottles and so we had to

1 replace them?

2 A. Not that I recall.

3 Q. Okay. Do you ever recall any
4 issues regarding missing controlled substances?

5 A. At store level?

6 Q. Correct.

7 A. There have been situations at
8 store level where there have been missing
9 controlled substances.

10 Q. Is that a common occurrence?

11 A. Not really.

12 Q. Okay. So it was uncommon?

13 A. I would say.

14 Q. Do you think DDM did a good job of
15 preventing diversion at its store level?

16 A. I think we did.

17 Q. Okay. All right. So let's just
18 recap this because I want to make sure I fully
19 understand. So at some point in the '90s, DDM
20 designed this report that would generate
21 monthly, right?

22 A. Yes.

23 Q. Okay. And the monthly report had
24 every store on it, right?

1 A. Yes.

2 Q. And it would show the rolling
3 12-month average for -- well, it would reflect
4 the rolling -- strike that.

5 The formula used to decide whether
6 an ordering history would show up for a given
7 store was whether it exceeded the prior 12-month
8 rolling average by 99 percent, right?

9 A. Yes.

10 Q. Otherwise nothing would show up,
11 right?

12 A. Right.

13 Q. Okay. And so this report, did it
14 get e-mailed to you? Was it printed?

15 A. Printed.

16 Q. Okay. So this report comes out
17 and you go and you grab it and then you look at
18 it, right?

19 A. Correct.

20 Q. And you spend a couple hours and
21 you look at all the orders or the ordering
22 history that shows up. And you'd agree that
23 we're talking about ordering history, right, not
24 necessarily a specific order?

1 A. Say again.

2 Q. So, like, for example, the store
3 orders -- the stores made orders more than once
4 a month, right?

5 A. Yes.

6 Q. Okay. And so the report would
7 reflect what was ordered the prior month, but it
8 wasn't a -- it wasn't showing specific orders,
9 it was showing the total orders?

10 A. Yes.

11 Q. Okay. And so you would then look
12 at that and you would make a judgment call as to
13 whether you needed to follow up with the store
14 to get more information, correct?

15 A. Yes.

16 Q. Okay. And if you decided that a
17 particular change was large enough, based on
18 your own judgment, then you would send a form to
19 the store asking for more information, correct?

20 A. Correct.

21 Q. Okay. And what -- let's say we
22 had that store where they averaged five and now
23 they've ordered ten the last month, what would
24 be a satisfactory explanation for why they

1 increased their order?

2 A. If the number of scripts went up,
3 if the number of -- the volume of controlled
4 substances that were dispensed went up, then
5 that would equate to a reason why their volume
6 went up. But then, again, on the same token,
7 there was lots of times when I would follow up
8 if I wasn't -- if that wasn't a complete answer,
9 I would make sure that the bottles were still on
10 the shelf.

11 Now, so there were several times
12 where the pharmacist would increase their order
13 because they were running a little bit low
14 previously. These are controlled drugs for
15 pain. We don't want to run out of a pain
16 medication that someone needs immediately. You
17 can't tell them, they're going to come in two
18 days later for their pain medicine.

19 So we would -- there were a lot of
20 times when the pharmacist would -- might order
21 heavier, you know, than normal, just so they
22 wouldn't run out, if they were getting low.

23 Q. And was that okay by you?

24 A. Yes, as long as I knew where they

1 were.

2 Q. Okay. So if a pharmacy averaged
3 five and then they ordered ten, they'd show up
4 on the report, right?

5 A. Yes.

6 Q. And then you would decide whether
7 or not that warranted any follow up, right?

8 A. Yes.

9 Q. Okay. And if the pharmacist
10 filled out this form and said, "Look,
11 Mr. Nameth, you know, we had more prescriptions
12 this month we had to fill and that's why we had
13 to order twice as much," that would be a
14 sufficient explanation?

15 A. As long as the volume would equate
16 to that, yes.

17 Q. Okay. And what would they need to
18 do to show you that the volume equated to the
19 increase in ordering?

20 A. They would either -- they would
21 either send a report of the actual scripts. If
22 they didn't send a report of the actual scripts,
23 if they determined that they had an increase in
24 volume or whatever of particular scripts, they

1 would have an explanation of why, and that could
2 have been followed up -- well, you know, a lot
3 of times it was, was how many bottles are left
4 on your shelf. Because the last thing we wanted
5 is to have somebody, you know, have some
6 diversion going on at store level.

7 Q. Okay. And so would it be fair to
8 say that the purpose of that report and your due
9 diligence was to make sure they weren't
10 replacing opioids, for example, with some that
11 had been diverted at the store level like
12 through theft; would that be fair?

13 A. What do you mean by "replacing"?
14 I didn't understand that.

15 Q. So it sounds -- you indicated to
16 me that an appropriate explanation for an
17 increase in orders that would show up on that
18 report would be that there were more
19 prescriptions, right?

20 A. Yes.

21 Q. And then you said to me that you
22 were concerned with making sure that they
23 weren't replacing bottles that may be -- were
24 diverted through theft or some other means at

1 the store level, correct?

2 A. I'm getting hung up on

3 "replacing." You know, what --

4 Q. Well, tell me what you mean. I'm

5 just trying to understand what you're telling

6 me. That's all.

7 A. Okay. I wanted to make sure that

8 the bottles were not diverted out of the store

9 through theft, that they have them on the shelf.

10 Q. Okay.

11 A. So --

12 Q. And so you wanted to make sure

13 that the increased order wasn't sort of --

14 wasn't a way of compensating for a bottle that

15 disappeared; is that fair?

16 A. Yes.

17 Q. Okay. What other ways that you

18 understand that a -- let's say a bottle of

19 opioids could be diverted out of a DDM store?

20 A. What other ways?

21 Q. Correct.

22 A. Well, possible theft, but other

23 possible ways? Maybe through a delivery. Maybe

24 there was a driver that decided to, you know,